

HOUSE BILL ANALYSIS

HB 1080

Title: An act relating to protecting the health and safety of department of corrections and jail staff.

Brief Description: Providing for disclosure of offenders' HIV test results to department of corrections and jail staff.

Sponsors: Representatives Backlund and Ballasiotes.

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND CORRECTIONS

Staff: Pat Shelledy (786-7149)

Background: *HIV testing generally involves laboratory examination of blood specimens for presence of the human immunodeficiency virus or antigens.*

Requests for tests of another person: *Law enforcement officers, fire fighters, health care providers or other persons who have been substantially exposed to a person's bodily fluids may request that a local public health official require the other person to submit to an HIV test. The results of that test may be released to the exposed person.*

Specific rules apply to obtaining the HIV test results of offenders.

1. ***HIV testing of offenders.*** *Criminal offenders are tested for the HIV virus under various circumstances. Some of the testing is done pursuant to statutory mandate; other testing is done based on the offender's voluntary request.*

a. ***Mandatory testing:*** *Mandatory HIV testing of offenders occurs under two circumstances. First, testing is required upon the conviction of certain offenses, including sex offenses and prostitution offenses. Second, testing can be required if an inmate's actual or threatened behavior shows a possible risk to staff, public, or others. The "possible risk" determination is made by the Department of Corrections with respect to state prison inmates, and by local public health officers with respect to jail detainees.*

b. ***Voluntary testing:*** *HIV testing of offenders also occurs when voluntarily requested by the offender.*

2. ***Universal precautions.*** *Federal and state law require the use of "universal precautions" whenever an employee has exposure to blood or potentially infectious materials. "Universal*

precautions" is an approach to infection control that calls for all human blood and certain human body fluids to be treated as if they are infectious for blood borne pathogens, including HIV.

3. Disclosure of offenders' HIV test results. State law provides that HIV test results may not be disclosed absent specific statutory authorization. Unauthorized disclosure is prohibited and can lead to disciplinary action or other penalties prescribed by law. Violations of the laws regarding HIV testing, including the provisions limiting disclosure, are gross misdemeanors.

The department of corrections health care providers must make the sexually transmitted disease status of an inmate available to a superintendent as necessary– for disease control and for protection of staff, offenders, and public. The information may also be given to transporting officers and receiving facilities. Local public health officers may make the sexually transmitted disease status of a jail inmate available to a jail administrator under similar circumstances.

The superintendent or administrator may disclose the information only as necessary for the purposes of disease control and protection of others. These provisions apply equally to voluntary and mandatory testing.

The Washington State Supreme Court has held that the current law regarding HIV testing of offenders and the dissemination of those results do not violate an offender's constitutional right to privacy. The basis for the court's holding was that the state's interests in having the testing performed are compelling, the testing is narrowly tailored to meet these interests, and disclosure is limited.

Summary: Statement of intent and finding: The Legislature finds that the health and safety of jail and corrections staff are often placed in jeopardy while they work. The Legislature intends to notify those staff of the HIV status of inmates with whom the staff are in close proximity, if the test is mandated by law. The Legislature does not intend to discourage voluntary testing for HIV or mandate disclosure of test results voluntarily obtained.

Requests for tests: Jail staff persons and corrections staff persons are added to the list of workers who may ask a local public health officer to perform a test on another person if the corrections or jail staff person is substantially exposed to the inmate's bodily fluids.

Disclosure of results of mandatory tests: The results of an offender's mandatory HIV test must be given to a department of corrections (DOC) superintendent or jail administrator. The results must also be given to all DOC or jail staff who may come within close physical proximity of the offender during the regular course of their duties.

Disclosure of results of voluntary tests: Results from voluntary testing must be made available to a DOC or jail superintendent or administrator, without current law's limitation that the information is necessary– for disease control or protection of individual safety. However, the superintendents and jail administrators may use the information only for disease prevention and control.

Disclosure to transporting officers and receiving facilities: The results of HIV tests must also be given to DOC or jail transporting officers, as well as to receiving facilities. This requirement

applies to all tests, not just those mandatorily conducted.

Penalties: Clarification is provided that violation of the disclosure limitations is a gross misdemeanor. An individual receiving an offender's HIV test results is to use that information only for disease prevention or control and for protection of staff, offenders, detainees, and the public. Use for any other purpose, including harassment or discrimination, and any other unauthorized disclosure of the test results, may result in disciplinary action, conviction of a gross misdemeanor, or other penalties of law.

Rule-making: The Department of Health and the DOC are to adopt rules implementing these changes. They are also to report to the Legislature by January 1, 1998, regarding (1) relevant changes in rules, policies, and procedures; and (2) the number and circumstances of the disclosure of mandatory HIV test results under this bill.

Require the Exercise of Rule- Making Powers: No

Fiscal Note: Requested on February 4, 1997.

Effective Date: Ninety days after adjournment of session in which bill is passed.